

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR - 2 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Part 90, Subpart T
of the Commission's Rules to
Expand Frequency Availability for
Disaster Relief Organizations in
the Special Emergency Radio Service

)
)
)
)
)
)

RM- _____

To: The Chief, Private Radio Bureau

PETITION FOR RULE MAKING

The American National Red Cross

Christopher D. Imlay
BOOTH, FRERET & IMLAY
1233 20th Street, N.W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

March 2, 1994

No. of Copies rec'd
List ABCDE

055
PRB

TABLE OF CONTENTS

	<u>Page</u>
Summary	i
I. Introduction	2
II. Current Frequency Availability for Disaster Relief Organizations is Severely Limited	3
III. Additional Frequencies Must Be Authorized for SERS Disaster Relief Organization Eligibles, And More Flexible Operational Rules Adopted	7
IV. Amendment of Subpart T of Part 90, to Permit Use of Public Safety/Mutual Aid Set-Asides at 220-222 MHz By Disaster Relief Agencies Is Called For	11
V. Conclusion	14
Appendix	

SUMMARY

By this petition for rule making, the American National Red Cross seeks to alleviate a severe shortcoming in its ability to coordinate disaster relief efforts following localized and regionalized disasters because of a shortage of radio frequencies. Specifically, the petition seeks to amend Sections 90.41 and 90.720 of the Commission's Rules, to expand by the addition of ten dedicated or cooperatively shared channels in the 220-222 MHz band, the nationwide frequency allotments available for nationwide use by disaster relief organizations. The Red Cross seeks to use these channels, in addition to the wholly inadequate single frequency 47.42 MHz, for coordination of supply delivery, personnel dispatch and distribution of message traffic throughout a disaster site, and in and out of the affected area.

The ten additional channels sought by the Red Cross must be uniform throughout the United States, so that individual chapters, several of which may be called upon in a given relief effort, may intercommunicate and be prepared through training exercises in the types of communications to be provided on individual channels to utilize the equipment without delay.

RECEIVED

MAR - 2 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Part 90, Subpart T
of the Commission's Rules to
Expand Frequency Availability for
Disaster Relief Organizations in
the Special Emergency Radio Service

)
)
)
)
)
)

RM- _____

To: The Chief, Private Radio Bureau

PETITION FOR RULE MAKING

The American National Red Cross (Red Cross), by counsel and pursuant to Section 1.401 of the Commission's Rules, hereby respectfully requests¹ that the Commission issue a Notice of Proposed Rule Making at an early date, proposing the amendment of Section 90.720 (47 C.F.R. §90.720), Subpart T, to expand the available frequencies for disaster relief agencies eligible for licensing thereunder, to include ten dedicated or cooperatively shared, additional channels on a nationwide basis in the 220-222

¹ This is an amended petition for rule making. The initial petition, specifying a different frequency band, was filed July 6, 1993. It has not been given a file number, nor published for public comment. Discussions with land mobile staff indicated that there were difficulties with the frequency band proposed in the petition, including issues of relocation of existing users, and the long waiting list of users in most markets. Alternatives were suggested by Commission staff which do not involve those same difficulties. The instant amended petition proposes one of those alternatives, which the Red Cross believes is the most practical.

Mhz band for temporary base and mobile itinerant operation for disaster relief operations, in the continental United States and its possessions; and to permit disaster relief training exercises periodically on the same frequencies. In support of the request, and the proposed appendix attached hereto, the Red Cross states as follows:

I. Introduction

1. The American National Red Cross is a single, national corporation that operates throughout the United States and its territories and possessions. It is organized and exists pursuant to a charter granted by the United States Congress.² It is both a Federal instrumentality and a qualified tax-exempt charitable organization, and it is subject to prescribed federal supervision.³ It is not, however, a federal agency.⁴ The Red Cross is eligible for licensing, and is a licensee of the Commission, as a Disaster Relief Organization pursuant to Section 90.41 of the Commission's Rules governing the Special Emergency Radio Service (SERS).

2. The Red Cross is the principal national disaster relief organization in the United States, and in its territories and

² 36 U.S.C. §1, et seq.

³ See, Department of Employment v. United States, 385 U.S. 355 (1966).

⁴ See Sturges, "The Legal Status of the Red Cross", 56 Michigan Law Review 1 (November, 1957).

possessions. It provides critical disaster relief service to the American Public in the aftermath of local, regional and national disasters, and provides these services to others throughout the world at the request of the International Red Cross. It has cooperative arrangements with Federal agencies,⁵ including the Federal Emergency Management Agency (FEMA), relative to the provision of relief efforts following natural and man-made disasters. The Red Cross is the only non-Federal primary respondent in the Federal Disaster Response Plan authored by FEMA.

II. Current Frequency Availability for Disaster Relief Organizations is Severely Limited

3. As the Red Cross has repeatedly discovered, the coordination of relief efforts at the site of a local or regional emergency, such as the recent Red Cross relief efforts in the aftermath of Hurricanes Andrew in south Florida and Iniki in Hawaii, and most recently at the site of the midwest floods and the Los Angeles Earthquake, require the use of short-range radio communications. VHF and UHF communications are necessary to coordinate delivery of emergency relief supplies, transportation of food and water, shelter administration, damage assessment, logistics in the affected area, transportation of personnel, and other related relief communications. During Hurricane Hugo and the Hayward Fault Earthquake, the Red Cross had deployed more than 1,600 Red Cross personnel in each of the affected areas. A single,

⁵ These agencies include the Department of Defense and the United States Coast Guard.

dedicated radio channel available on a wide-area basis pursuant to Section 90.53 of the Rules (47.42 MHz) has repeatedly proven hopelessly insufficient and inadequate to address the administrative, tactical, logistical and emergency information which must be communicated and disseminated between and among deployed personnel during such massive disasters.

4. The Red Cross has "made do" with the single 47.42 MHz channel⁶ to the extent possible up to the present time, by resort to other facilities, either purchased, or provided voluntarily by other entities who are Commission licensees. Long-distance communications have been facilitated by the use of leased common carrier facilities, principally through the INMARSAT system, using Red Cross-purchased transportable units. The cost of these facilities has been and will continue to be borne by the Red Cross. Amateur radio operators often provide additional message traffic capabilities for both long- and short-range communications on a volunteer basis. Some cellular facilities are available for disaster relief in certain circumstances as well. Overall, however, none of these options provide reliable disaster relief communications in a given location at a given time,⁷ and none

⁶ There are approximately 800 of the 2600 Red Cross chapters licensed by the Commission to utilize the 47.42 MHz channel. Equipment for this frequency is used, pursuant to the terms of Section 90.41(a), only during times of actual disaster relief. This limitation diminishes the preparatory efforts of the Red Cross. There is a distinct need for use of disaster relief communications training by individual chapters.

⁷ Amateur Radio operator availability varies depending on location, and the ability to plan for communications does not allow for primary reliance only on amateur radio. This is not to demean

permit significant advance planning for disaster relief, as it is impossible to determine where the next disaster will strike. As an example, in St. Croix, during the aftermath of Hurricane Hugo, the Red Cross had some barely reliable long-range communications to Puerto Rico and the United States mainland. However, a lack of reliable short-range communications facilities on-site severely limited the disaster relief which the Red Cross could provide, and restricted the responsiveness of its efforts. When the inbound message traffic reached St. Croix, the information could not be disseminated to the several shelters, storage facilities, or to personnel in transit throughout the island in more than 40 vehicles which were in use throughout the island. Information could not be assembled and sent back to the United States mainland, either. Thus, under present frequency arrangements, the Red Cross is reduced, at the time of an emergency, to the vague hope that some communications facilities will be provided on site, and that there can be some use of the facilities by uncoordinated personnel. Such is a completely unsatisfactory situation, which may very well directly result in loss of life.

the importance of amateur radio communications during an emergency. It has been of immense value time and time again. The Red Cross will continue in the future to make use of amateur radio as an important adjunct to its disaster relief communications, especially for long-distance message traffic. The urgent need for in-place communications protocols, and for administrative communications which are not properly provided by radio amateurs, prohibits sole reliance on amateur radio operators by Red Cross disaster relief teams. Neither can the Red Cross rely on cellular communications, which may or may not be available in a given area after an emergency. Cellular facilities are not useful in dispatch-type, or coordination-type operations on-site, either.

5. The Red Cross is a signatory to the Federal Response Plan: the Federal plan for responding to catastrophic disasters affecting the United States, its territories and possessions.⁸ The Commission has also signed on as a participant in that Plan. The role of the Red Cross under the Plan is as the primary provider of emergency support function #6, Mass Care. It is not possible for the Red Cross to effectively plan for such participation, nor to confidently deploy staff and volunteers (which can number in the thousands) in an affected area in the aftermath of a catastrophic disaster, without a significant improvement in local communications capabilities. The Red Cross has noted the shortcomings in emergency communications capabilities it currently suffers under current SERS rules in correspondence with FEMA.

6. In an effort to alleviate the shortfall in available communications capabilities, the Red Cross filed an application on May 1, 1991 during the window for applications for five-channel nationwide non-commercial facilities at 220-222 Mhz. Numerous other entities filed applications which were mutually exclusive with that

⁸ The Federal Response Plan has been developed through the efforts of the Subcommittee on Federal Earthquake Response Planning in conjunction with the Regional Steering Committee, chaired by the Federal Emergency Management Agency, Region IX, San Francisco. These groups provide a forum for the 25 agencies with identified responsibilities in the Plan to participate in planning and exercise activities that are required to develop and maintain a Federal response capability. FEMA has coordinated development of the plan to fulfill its lead agency responsibilities under the Disaster Relief Act and the Earthquake Hazards Reduction Act. The purpose of the plan is to assist State and local governments affected by a catastrophic earthquake or, if appropriate, another catastrophic natural event, during emergency life saving operations.

of the Red Cross. To date, the successful application has not been chosen, as the lottery for nationwide non-commercial applicants in that band has not been held. Because of the two-year delay in resolving that proceeding; the additional delay which was anticipated before any licenses could be awarded; and given the very distinct probability that the prolonged wait would produce nothing of value to the Red Cross' disaster relief efforts, the Red Cross recently withdrawn its application and requested, and been granted, a refund of its filing fee. The need for improved communications capability, given the obligations of the Red Cross in disaster relief efforts, however, remains, and is becoming more acute all the time.

**III. Additional Frequencies Must Be Authorized for SERS
Disaster Relief Organization Eligibles,
And More Flexible Operational Rules Adopted**

7. What is called for at the present time, without delay, is the exclusive allocation of at least ten additional VHF/UHF frequencies, preferably ten discrete paired channels in the 220-222 Mhz band.⁹ These ten channels would be used for disaster relief work and disaster relief training exercises and operations by the

⁹ The Red Cross ideally would prefers the allotment of channels in the 820-870 Mhz band, as opposed to other VHF or UHF bands, due to the availability of reasonably priced handheld, mobile, and temporary base equipment in that band, some of which has previously been made available to the Red Cross, and used in relief efforts in Hurricane Iniki in Hawaii recently. Indeed, in a petition for rule making filed July 6, 1993, the Red Cross requested the allocation of channels in that band. However, frequencies in that band are essentially fully deployed, and any reallocation is not practical at the present time, according to Commission staff.

American National Red Cross and its chapters on a nationwide¹⁰ basis, both for simplex and duplex (repeater) operation. The Red Cross is eligible for licensing in the 220-222 Mhz band, and on certain other frequencies, under Subpart C of Part 90 Rules governing the Special Emergency Radio Service as a disaster relief organization. Presently, Section 90.53 of the Rules lists 220 to 222 Mhz, among other frequency bands, in the table of available frequencies for SERS licensees. A footnote to those frequency listings (§90.53(b)(8)) states merely that Subpart T contains rules for assignment of frequencies in the 220-222 Mhz band. Subpart T makes no provision for dedication of any nationwide, itinerant use by SERS licensees of any of those channels. As discussed above, the Red Cross did file an application for a non-commercial, nationwide five-channel system on non-government nationwide channels, but its application was mutually exclusive with at least twenty other applicants, and it appeared that no assignment in that band was likely to be forthcoming¹¹. While the Red Cross would be eligible

¹⁰ The need for nationwide channel allocations for Red Cross use is based on the fact that the Red Cross is a chapter organization. The chapters would individually invest in hardware for use by chapter staff and volunteers. However, many chapters may be, and usually are, involved in a given disaster relief effort, and intercommunication among all volunteers and staff is critical to disaster relief planning.

¹¹ The charitable nature of the Red Cross, and the extensive drain on its resources from its disaster relief efforts in the past several years from the midwest floods, various hurricane and earthquake relief efforts, and the west coast fires in the past few years, necessitate a conservative approach to radio licensing practices. The Red Cross is not in a position to participate in a lottery process with extremely low chances of success, while risking substantial amounts of donated funds in the process. When

for licensing in those bands on a single-channel basis, it would have been required to apply, on a city-by-city, chapter-by-chapter basis for individual channels, which would by definition not be uniform from city to city. Its applications would, in addition, be exclusive with other applicants as well. Such would not have addressed the intercommunication requirement between and among Red Cross chapters throughout the United States. Participation in a regional disaster relief effort would be impossible to coordinate on that basis.

8. The purposes sought to be achieved by the Red Cross include the provision of actual disaster relief communications, and as well the use of the communications facilities for training exercises and chapter operations preparatory to disaster relief. Individual staff and volunteers cannot respond in an emergency if use of the equipment is limited to operation only during the actual emergency. The volunteers must be prepared to respond in coordinated fashion prior to their deployment in an emergency. It is possible for the Red Cross to conduct training exercises and to incorporate communications plans in its disaster relief efforts for the short term by means of experimental authorizations. Indeed, the Red Cross obtained experimental authorization in the 820-870 Mhz band for training efforts in certain locations in the southern United

the Commission offered the opportunity to withdraw from the lottery process, in which the Red Cross was intermixed with commercial radio users, and to recoup its substantial filing fee, it had no choice but to do so. Unfortunately, the exercise left the Red Cross in the same position it had occupied before: in need of a few nationwide VHF or UHF channels for disaster relief communications.

States, preparatory to last year's hurricane season, conditioned on advance consultation with the appropriate Part 90 frequency coordination entity in advance.

9. It is anticipated that the training, operations and disaster relief efforts of the Red Cross necessitate exclusive use of ten paired channels at 220-222 Mhz sought to be made available hereunder to disaster relief organizations. Indeed, during non-emergency periods, the more than 2600 chapters of the Red Cross would require only very light use of the frequencies for disaster response training exercises, and for other purposes such as chapter operational communications preparatory to disaster relief work. It is requested herein that the strictures of Section 90.41(a) of the Rules be relaxed as well, to permit disaster relief organizations to utilize assigned frequencies for training and operational communications as well as for actual disaster relief coordination. The Red Cross would make efficient use of the requested ten channels, given the fact that there are more than 2600 active Red Cross chapters nationally. It is critical under any circumstances, that some VHF or UHF frequencies be made immediately available to the Red Cross during a disaster, and that incompatible or uncoordinated sharing be minimized during staging, relief, or cleanup operations. The Commission therefore should consider the allotment of either exclusive channels to SERS disaster relief organizations, or shared frequencies with compatible, coordinated sharing partners. Should any sharing of the channels be required during non-emergency periods, such assignments should be made on a

non-interference basis, such that use of the frequencies is preemptible by the Red Cross without delay at the times or locations of disaster relief efforts.¹²

10. It is not necessarily the suggestion of the Red Cross that it be included as an eligible in the newly created Emergency Medical Radio Service (EMRS), although the Red Cross provides emergency medical care as an adjunct of its disaster relief efforts. Rather, the eligibility of the Red Cross is squarely within the definition of a disaster relief organization under the SERS.

IV. Amendment Of Subpart T of Part 90, To Permit Use of Public Safety/Mutual Aid Set-Asides at 220-222 Mhz By Disaster Relief Agencies Is Called For.

11. The Commission created service rules under Part 90 for land mobile use of the 220-222 Mhz band in April of 1991¹³. It accepted applications for the various classes of eligibles in the band in May of 1991. Channels 161-170 (220.8075 to 220.8525 and 221.8075 to 221.8525 Mhz) were set aside for Public Safety and Mutual Aid use in the Emergency Medical Service. According to the Report and Order in Docket 89-552, the Commission intended that

¹² The Commission has just permitted inter-service sharing between non-governmental SERS eligibles and those in the Industrial/Land Transportation Radio Services in the 150-174 Mhz and 450-470 Mhz bands, after EMS licensees were removed from the SERS. The criteria for such is pursuant to 47 C.F.R. §90.176(b).

¹³ See, the Report and Order, 6 FCC Rcd. 2356 (1991); recon. granted in part, 7 FCC Rcd. 4484 (1992); corrected by Erratum, document no. 24589, released August 28, 1992; further corrected by Second Erratum, DA 92-1234, released September 11, 1992.

these channels be used for communications related to the immediate safety of life; communications to facilitate interoperability between public safety entities; and other public safety uses. However, the Commission noted that these channels would not likely be popular with public safety eligibles:

While traditional land mobile operation will be permitted, communications related to the immediate safety of life and communications to facilitate interoperability between public safety entities will receive priority on these channels. Although public safety entities are not likely to devote substantial resources to the initial development of narrowband technology, we are convinced that they will avail themselves of that technology once it is developed. We contemplate that these channels will prove useful in providing public safety eligibles with the means to more effectively coordinate their responses to safety-of-life situations such as large wildfires, disasters, and other emergencies. After five years we intend to assess public safety use of this limited set-aside with a view to reassigning this spectrum if it is underutilized.

6 FCC Rcd. at 2360.

On reconsideration, the Commission declined, despite strong argument to the contrary, to expand eligibility to the 220 Mhz set-asides for public safety/mutual aid use beyond Public Safety Radio Service licensees. One petitioner¹⁴ sought SERS access to the frequencies for ongoing, safety-of-life functions. The Commission held, however, that "the greater demand for the use of these channels exists among Public Safety Radio Service licensees." However, the Commission agreed that SERS entities regularly engaged in the provision of safety of life services could also benefit from

¹⁴ See the Petition for Reconsideration in Docket 89-552 filed by Michael C. Trahos, at 6, and the comments in support thereof filed by the Region 20 Public Safety Plan Review Committee, filed June 20, 1991.

the availability of additional spectrum, and noted that it had proposed to remove such licensees from the SERS and place them in the EMRS, a component of the Public Safety Radio Service. This proposal has since been enacted.

12. Disaster relief agencies, however, such as the Red Cross, have been left out in the cold by the above eligibility limitation. The Red Cross, with its one nationwide disaster relief channel, is in desperate need of access to additional nationwide channels as discussed above. Discussions with Commission staff indicate that, in the entire United States, **fewer than ten applications have been submitted to the Commission to date for licensing on the set-aside channels by public safety eligibles.** It is thus apparent that there is not the demand for the set-aside channels by the public-safety eligibles that was anticipated by the Commission at the outset, and, more importantly, there is a distinct opportunity for the Commission to permit, even on a preemptible basis if public safety eligibles in a particular market should appear, additional use of the frequencies, on a nationwide basis, by disaster relief organizations. While there may be some interest in these channels by public safety entities in the future, the channel pairs are currently lying fallow, and can support compatible sharing by disaster relief organizations in the SERS. The Red Cross is willing to use these narrowband channels on a nationwide basis, and will coordinate as necessary the use thereof prior to disaster relief operations with public safety entities, APCO, or other coordinating entities. The availability of these set-asides to SERS disaster

relief organizations will further promote involvement of those organizations in local emergency communications plans, and permit organizations such as the Red Cross to become more completely assimilated into the emergency communications plans of local and regional entities. The Red Cross is willing to coordinate use of all channels with Public Safety licensees nationwide.

13. Finally, if the Commission should determine that the procedures for assignment of frequencies under Subpart T of the Commission's Rules absolutely cannot be amended to permit the allotment of ten channels in the 220-222 Mhz band for nationwide use by SERS disaster relief organizations, then the Red Cross respectfully requested that the Commission propose the allocation of channels in another band, such as 820-824 Mhz and/or the 851 to 869 Mhz segments by amendment of Subpart S, or otherwise, so as to create a nationwide allotment of ten channels in other bands above 50 Mhz for SERS use by disaster relief organizations.

V. Conclusion

14. The American National Red Cross and its volunteers in chapters throughout the United States, a disaster relief organization as defined at Section 90.41 of the Commission's Rules, require expanded communications capabilities, especially for short-range communications, during disaster relief operations and training exercises therefor. The nature of the disaster relief functions and organization necessitates interoperability throughout the United States, and therefore a nationwide allotment of several

operating frequencies. At present, the single 47.42 Mhz channel available on a nationwide basis is wholly inadequate to permit the operation of the Red Cross, and often thousands of deployed personnel at a disaster relief site. Leased common carrier facilities are used for certain purposes, and volunteer amateur radio facilities are useful, but neither can substitute for dedicated short-range communications facilities for administrative and operational communications necessary during a disaster and immediately afterward. To perform its Congressionally mandated functions, the Red Cross requires the nationwide availability of specific additional VHF/UHF frequencies for disaster relief organizations in the SERS, as an addition to Section 90.53(a) and (b)(21) of the Commission's Rules. The channel pairs set aside in Docket 89-552 for public safety entities have not been applied for since being made available for application, and there is an opportunity for use thereof on a nationwide basis for disaster relief organizations in the SERS.

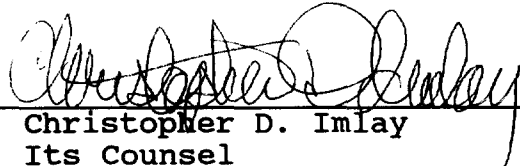
Therefore, the foregoing considered, the American National Red Cross respectfully requests that the Commission issue a notice of proposed rule making at an early date, looking toward the amendment of Subpart T, Part 90 of the Commission's Rules, to expand the allotment of frequencies reserved for assignment on a primary basis

to national organizations eligible for disaster relief operation under §90.41 of the Commission's Rules, to include channels 161-170 in the 220-222 Mhz band as set forth herein and in the attached appendix.

Respectfully submitted,

THE AMERICAN NATIONAL RED CROSS

By


Christopher D. Imlay
Its Counsel

BOOTH, FRERET & IMLAY
1233 20th Street, N. W.
Suite 204
Washington, D. C. 20036
(202) 296-9100

March 2, 1994

APPENDIX

Section 90.41(a) of the Commission's Rules, 47 C.F.R. §90.41(a), is amended to read as follows:

§90.41 Disaster Relief Organizations.

(a) Eligibility. Organizations established for disaster relief purposes having an emergency radio communications plan are eligible to hold authorizations to operate radio stations for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of the emergency situation during periods of actual or impending emergency, or disaster, and until substantially normal conditions are restored. In addition, the stations may be used for training exercises incidental to the emergency radio communications plan, and for operational communications of the disaster relief organization or its chapter affiliates.

Section 90.720 of the Commission's Rules, 47 C.F.R. §90.720, is amended to read as follows:

§90.720 Channels available for public safety/mutual aid and disaster relief organizations.

(a) Part 90 licensees whose licenses reflect a two-letter radio service code beginning with the letter "P" (but only those licensees whose licenses reflect the "PS" radio service code which are disaster relief organizations eligible for licensing under Section 90.41) are authorized by this rule to use mobile and/or portable units on Channels 161-170 throughout the United States, its territories, and possessions to transmit:

- (1) Communications relating to the immediate safety of life;
- (2) Communications to facilitate interoperability between public safety entities; or
- (3) Communications on behalf of and by members of organizations established for disaster relief purposes having an emergency radio communications plan, for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of emergency conditions during periods of actual or impending emergency, or disaster, until substantially normal conditions are restored; for limited training exercises incidental to an emergency radio communications

plan, and for necessary operational communications of the disaster relief organization or its chapter affiliates.